In the Supreme Court of the United States

OCTOBER TERM, 1953

No. 407

ROBERT NORBERT GALVAN, *Petitioner*

v.

U. L. PRESS, *Officer in Charge,* Immigration and Naturalization Service, United States Department of Justice, San Diego, California

On Writ of Certiorari To The United States Court of Appeals For The Ninth Circuit

SUPPLEMENTAL MEMORANDUM FOR THE RESPONDENT

This memorandum is submitted, by leave of the Court, in response to the Reply Brief for Petitioner. It is limited to certain of the matters discussed in that Reply Brief.

I

On petitioner's belated contention that Section 22 of the Internal Security Act of 1950 requires a finding that the alien was aware of the Communist Party's advocacy of forcible overthrow of the

Government, the discussion in our main brief (see pp. 67-69) incorporates and refers to the Government's *Harisiades* brief (Oct. Term, 1951, Nos. 43, 206, 264, at pp. 31-47).[1]

A. As for legislative history, in the narrow sense, we have nothing to add to the *Harisiades* discussion which fully deals, we believe, with the history since 1918 of this type of deportation legislation and particularly with the legislative history of Public Law 14 (including Senator McCarran's memorandum on which petitioner leans so heavily) (see *Harisiades* brief, pp. 29-31, 44-47). In view of petitioner's stress on the differences between the 1940 Act, involved in *Harisiades,* and the 1950 Act, involved here, it is appropriate for us to emphasize that the latter statute makes a specific distinction between aliens who are or were members of the Communist Party and members of Communist-front organizations required to register under the Subversive Activities Control Act; aliens belonging to such organizations are not to be deported if they "establish that they did not know or have reason to believe at the time they became members of or affiliated with such an organization * * * that such organization was a Communist organization" (see *Harisiades* Brief, p. 34). Whatever may be true of the prior statutes, this clear distinction in the 1950 Act shows

[1] Additional copies of the *Harisiades* brief have been lodged with the Clerk.

that in the present statute Congress did not require any showing of knowledge or awareness where the membership is in the Communist Party itself.

B. Petitioner seeks to minimize (Reply Brief, pp. 2-3) the lower court judicial decisions holding mere membership sufficient under the prior legislation (see *Harisiades* Brief, pp. 43-44), but fails to point out that (a) in none of those cases does there appear to have been any administrative *finding* of knowledge of the Communist Party's aims or that the alien himself advocated forcible overthrow, and (b) in each case the court upheld the deportation order, without relying on evidence of the alien's knowledge or belief, on the basis of a finding of membership in which "membership" meant precisely what it means in the administrative findings here. In *Ex parte Vilarino,* 50 F. 2d 582, 586 (C.A. 9), the Court of Appeals expressly sustained the deportation, in an alternative holding, "quite apart" from the meager "evidence" of personal knowledge cited by petitioner here. In *In re Saderquist,* 11 F. Supp. 525, 526-7 (D. Me.), affirmed on opinion below, 83 F. 2d 890 (C.A. 1), the judge specifically disregarded the charge that the alien personally advocated force and confined himself to the two charges involving membership in unlawful organizations; the opinion is limited to determining whether the Labor Department

was "justified in finding that the organization in which the petitioner claims membership is one advocating the overthrow of our government by force" and quotes from *Kjar* v. *Doak*, 61 F. 2d 566, 569 (C.A. 7): "Nor was it necessary to prove that appellant had knowledge of the contents of the programs of the several organizations, or any one of them. It is sufficient if the evidence showed that he was a member of, or affiliated with, such an organization as contemplated by the statute." Similarly, *Kjar* v. *Doak*, *supra*, concerned itself solely with the issue of whether the Communist Party fell within the statutory class. The court first held—over the alien's objection that the Party advocated force only if the owners of capital refused to be peaceably dispossessed of their property once the Party has peaceably gained control of the government—that the evidence showed that the Party "believes and advocates the use of force and violence whenever and wherever sufficient power is present to accomplish the purpose" (61 F. 2d at 568). Only then did the court hold alternatively (in the portion of the opinion on which petitioner relies) that even on the alien's view of the Party it was proscribed. *Greco* v. *Haff*, 63 F. 2d 863, 864 (C.A. 9), petitioner admits to be contrary to his contention.[2]

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[2] Other cases (not mentioned in the *Harisiades* brief) declaring or assuming the irrelevance of the alien's knowledge are *Ungar* v. *Seaman*, 4 F. 2d 80, 81-2 (C.A. 8); *Fortmueller*

In *Bridges* v. *Wixon*, 326 U.S. 135, there were no findings that the alien possessed knowledge of the unlawful character and aims of the organization which he was alleged to have joined or have affiliated himself with (see *Ex parte Bridges*, 49 F. Supp. 292, 301 (N. D. Cal.), and discussion below), and this Court pointed out that "So far as this record shows the literature published by Harry Bridges, the utterances made by him * * * revealed a militant advocacy of the cause of trade-unionism. But they did not teach or advocate or advise the subversive conduct condemned by the statute" (326 U.S. at 148; see also p. 149). If petitioner's view of the statute were correct, the omission of any findings on Bridges' knowledge of the character of the proscribed organizations, coupled with this evidence of his personal beliefs, would certainly have made for summary disposition of the charge based on membership in the Communist Party. Hardly more than a paragraph pointing out the deficiencies in the record would have been required. But the Court did not dispose of the case on that ground; on the contrary it discussed at length the inadmissibility of O'Niell's testimony as to the alien's membership. The latter half of the opinion (326 U.S. at 149-156) can only

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v. *Commissioner*, 14 F. Supp. 484, 487 (S.D. N.Y.); and *United States* v. *Wallis*, 268 Fed. 413, 415-6 (S.D. N.Y.) (the latter two are discussed *infra*). See also *Harisiades* v. *Shaugnessy*, 187 F. 2d 137, 141 (C.A. 2), affirmed, 342 U.S. 580.

be read as adopting the view that "membership" in the deportation statutes means no more than membership in the ordinary sense—the voluntary enrolling of oneself in an organization.

Petitioner relies on a number of cases not cited by us (Reply Br. 3) in which it is said "the courts *assumed* the materiality of knowledge and emphasized, in holding the alien deportable, his personal knowledge and endorsement of the Party's subversive aim during his membership" (emphasis added). But in none of these cases was the materiality of knowledge assumed. *Fortmueller* v. *Commissioner,* 14 F. Supp. 484, 485 (S.D. N.Y.), involved two charges of personal advocacy of violence; as to these, the evidence plainly had to deal with the alien's beliefs and it is in connection with these charges alone that the court discusses such evidence. On the third charge (membership in the Communist Party) (14 F. Supp. at 487), the court does not refer to the alien's own knowledge or belief. *United States* v. *Wallis,* 268 Fed. 413, 415-6 (S.D. N.Y.) held—despite the statement in the Reply Brief—that mere proof of membership in the Party was sufficient, and upheld a deportation order even though the alien apparently claimed that he understood the Party not to contemplate violence. In *Branch* v. *Cahill,* 88 F. 2d 545, 546-7 (C.A. 9), and *United States ex rel. Lisafeld* v. *Smith,* 2 F. 2d 90, 91 (W.D. N.Y.), there happened to be evidence of personal belief which

the court, quite naturally, set forth in upholding the deportation order; this does not mean, of course, that such evidence was essential.[3]

The short of the matter is that we know of no case, under the prior statutes, declaring that knowledge is essential where the charge is membership, and several decisions (beginning in the early '20's) stating that it is not required, or acting on that premise.[4]

C. The administrative practice is set forth in the *Harisiades* brief, pp. 44, 91 (see our main brief in this case, p. 31, fn. 20). For over thirty years, the Immigration Service has held proof of mem-

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[3] *United States ex rel Kettunen* v. *Reimer*, 79 F. 2d 315, 317 (C.A. 2) involved "affiliation" and not "membership."

[4] Petitioner's discussion of the cases seems to suggest that a finding of awareness is unnecessary and that it is sufficient that there be some evidence in the record from which the court can infer knowledge or assume that the administrator inferred it. If that be the rule, petitioner can gain no comfort from it. For there is evidence that he attended ten or twenty Communist Party meetings; that he was elected educational director of his Party unit; that he heard lectures at Party meetings on Communist books; that he saw lying around copies of the "Communist Manifesto," "The Communists in Action," "Left-wing Communism, an Infantile Disorder," "The Struggle Against Imperialist War and the Tasks of the Communists," and "Foundations of Leninism;" and that he "looked over" "Left-wing Communism." See our main brief, pp. 71-74. And there must be added to this specific testimony the evidence indicating that petitioner knows what he is about. See our main brief, pp. 74-77, and Mrs. Meza's account of her conversation with Galvan on his reasons for joining the Party (T. 126 *et seq.*)

bership and (prior to 1950) of the nature of the organization to be sufficient, and has not deemed it necessary in its deportation proceedings to introduce evidence of the alien's personal beliefs or knowledge or to make findings thereon where the charge is one of membership.[5] This practice and policy is revealed and confirmed by the available decisions of the Board of Immigration Appeals. See Matter of H [*Harisiades*], 3 I. & N. Dec. 411, 455, 458 (see our *Harisiades* brief, pp. 6-7); Matter of D, 3 I. & N. Dec. 787, 788-9; Matter of O, 3 I. & N. Dec. 736, 737 (referred to in our *Harisiades* brief, p. 44); Matter of Coleman (Transcript of Record, No. 264, Oct. Term, 1951, pp. 20-24); Matter of Mascitti (Transcript of Record, No. 206, Oct. Term, 1951, pp. 14, 17).[6] And it is

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[5] Of course, where the charge is one of personal advocacy, evidence of the alien's beliefs has been introduced, and even in membership cases such evidence has sometimes been brought out, by the alien or the Service, where it is readily available.

[6] In some of its decisions in which counsel have raised the issue of knowledge (*e.g.*, Matter of O, and Mascitti's case, *supra*), the Board of Immigration Appeals has said—in addition to holding flatly that it is unnecessary to prove knowledge—that membership in itself is sufficient evidence of knowledge of the proscribed doctrines, and also that the evidence showed that the alien attended Party meetings, read its literature, listened to speeches, and paid his dues.

If the last-mentioned factor is at all material, it is present here. Galvan attended several Party meetings, was elected to Party office, heard lectures on Party literature, and scanned some of this literature. See our main brief, pp. 71-74, and *supra*, fn. 4.

especially significant that, in the *Bridges* deportation case, neither Presiding Inspector Sears nor the Attorney General found that Bridges knew or was aware of the unlawful objective of the Communist Party, nor did either of them discuss the matter of Bridges' knowledge in connection with the finding of Party membership or of Party affiliation; the same is true of the decision of the Board of Immigration Appeals adverse to deportation. See Transcript of Record, No. 788, Oct. Term, 1944, pp. 73-106, 134-341, 367-492.[7]

The judicial decisions in Communist deportation cases also show that the administrative practice has been that findings as to the alien's awareness of the Party's doctrines are unnecessary, and it is sufficient to prove membership in the conventional sense. See the cases discussed *supra* and in

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[7] Bridges excepted to Judge Sears' failure to find that "the evidence does not establish that the alien had knowledge that the Communist Party of the U.S.A. at any time was an organization, association, society, or group" with the proscribed objectives (Transcript of Record, No. 788, Oct. Term, 1944, pp. 351-2). The same point was raised in the District Court (see *Ex parte Bridges*, 49 F. Supp. 292, 301 (N.D. Cal.) (discussed above), but was apparently not pressed in the Court of Appeals or in this Court. In *Bridges* v. *Wixon*, 326 U.S. 135, 149, the Court quoted an excerpt from the decision of Dean Landis, in the prior deportation proceeding, which indicated that Bridges expressed disbelief that the methods the Party wished to employ "were as revolutionary as they generally seem" and was unequivocal in his "distrust of tactics other than those that are generally included within the concept of democratic methods."

the Reply Brief at pp. 2-3, as well as the cases cited in our main brief at p. 51. The same understanding of the administrative practice seems indicated by informed writers on the subject. See Landis, *Deportation and Expulsion of Aliens,* 5 Encyc. of Soc. Sci. (1930), p. 97 ("possession of the [radical] belief is unnecessary, mere ignorant membership in a radical party being sufficient"); Clark, *Deportation of Aliens from the United States to Europe* (1931), pp. 222-223; Van Vleck, *The Administrative Control of Aliens* (1932), pp. 38-39, 88-89, 129-131.

D. Despite the statement in the Reply Brief (p. 4) that in *Harisiades* the Government argued that the aliens "were deportable because of their knowledge of the Party's aim of overthrow," the fact is otherwise. The Government said unequivocally, as to Harisiades, Coleman and Mascitti, that "on these records, it must be assumed that there is no proof that these appellants had such personal beliefs or knowledge" (*Harisiades* brief, p. 91; main brief in this case, p. 31, fn. 20), and it based its entire argument on that assumption. All that the Government did in the portion of its brief to which petitioner refers (*Harisiades* brief, pp. 47-49) was to show that the three aliens each joined the Communist Party voluntarily and not under duress, and that they knew it was the Communist Party of which they were members.

In the terms of Public Law 14 (Act of March 28, 1951, 65 Stat. 28), their membership was voluntary, and was not "(a) when under sixteen years of age, (b) by operation of law, or (c) for purposes of obtaining employment, food rations, or other essentials of living, and where necessary for such purposes." Nor was their membership like that of the member of the Socialist Party in *Colyer* v. *Skeffington*, 265 Fed. 17, 72 (D. Mass.) who suddenly and automatically found himself a member of something called the Communist Party.

The same is obviously true of Galvan. He knew it was the Communist Party of which he was a member, and his membership was uncoerced and while he was a full-fledged adult in his middle thirties. He attended and participated in meetings, heard lectures on Party literature and scanned some of it, and was elected to Party office. See our main brief, pp. 71-74, and *supra*, fn. 4.

II

Throughout his Reply Brief (*e.g.*, pp. 5, 7, 10) as in much of his main argument, petitioner seems to assume that the period of his Communist Party membership coincided with the "war-time alliance with Russia," the "Soviet-American alliance." But the record shows that his membership lasted until January 1947 when he attended his last meeting (on his own testimony), or until May or

June 1947 (on Mrs. Meza's testimony). See our main brief, pp. 71-74. He was elected educational director of his Party unit in the Fall of 1946. This was long after the World War II period of "Soviet-American friendship," and over a year after the beginning (in April 1945) of the conspiracy adjudged in the *Dennis* case. Indeed, petitioner's remarks in his Reply Brief on the nature of the Communist *Party* during World War II are quite at variance with his effort in his main brief (pp. 11, *et seq.*) to show that the entity which was active in that period was not the Party at all but the Communist *Political Association.* What petitioner now says may or may not be true of the Political Association, but it is certainly not true of the Party after its reconstitution early in 1945.

III

The Reply Brief also argues (pp. 10-11) that the Immigration and Naturalization Service must have discredited Mrs. Meza, the Government witness, because the hearing officer found that Galvan was a "member of the Communist Party between 1944 and 1946," and part of Mrs. Meza's testimony related to a conversation with Galvan in May or June 1947, when he was still a Communist, according to her testimony.

There are two answers. In the first place, the charge which was found proved was merely that petitioner had been a member of the Party after

entry into the United States, and both the Assistant Commissioner of the Service and the Board of Immigration Appeals found that this charge was proved, without specifying any dates of membership. Referring to the "entire record" or "all of the evidence of record,"[8] both of these determinations simply find that petitioner had been a member of the Party after entry. And *Bridges* v. *Wixon*, 326 U.S. 135, 152, holds that it is not the hearing officer but the higher ranks in the administrative hierarchy who are the deciding bodies in deportation cases.

Secondly, Mrs. Meza testified to events taking place in 1946, including petitioner's membership in a Party unit, election to office in the Fall of that year, and attendance at Party meetings. A substantial part of her testimony clearly dealt with that year and would therefore be relevant even to membership which terminated at the close of the year.

IV

In Section 22 of the 1950 Act, Congress was not merely—as petitioner urges (Reply Br., pp. 7-8)—enacting into a "conclusive presumption" its legislative determination that the Communist Party advocated the forcible overthrow of the Government. As pointed out in oral argument,

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[8] In the face of these statements, there is nothing to support the claim that only petitioner's admissions were considered.

Congress was not merely declaring that the Party fell within the previously-defined general class of organizations with unlawful objectives. Congress was creating a new class of deportable aliens:—those belonging to an entity which both advocates violence and at the same time is, and has been, under the direction and control of the "Communist dictatorship of a foreign country." See Section 2 of the 1950 Act, reprinted in our main brief, pp. 82-87. The factor of control by the Soviet Union, stressed by the Committee on the Judiciary (see our main brief, pp. 47-48), is a factor new to our deportation legislation and cannot be disregarded. Only the Communist Party and its affiliates and associated groups fall within the new class, and Congress was therefore not singling out the Party for a special legislative "determination." In the Alien Enemy Act of 1798, the Congress adopted similar legislation providing for the removal of nationals of enemy countries or of nations which threatened invasion of this country or a "predatory incursion."

In any event, as our main brief shows (pp. 54, *et seq.*), there is no constitutional objection to such action by Congress in the area of deportation. In that field, restraints on legislative power are at the minimum, if they exist at all, and accordingly the power to be more specific rather than more general is at its greatest. For, like the converse problem of generality or indefiniteness in legislation,

the permissible limits of specificity depend upon the subject matter with which Congress is dealing, the class of persons affected by the legislative action, and the type of sanction involved. Here, where the legislative action orders the deportation of aliens, the power of Congress over subject matter, persons, and sanction is "plenary."

CONCLUSION

For the foregoing reasons, and those discussed in our main brief, we respectfully submit the judgment below should be affirmed.

ROBERT L. STERN,
Acting Solicitor General.

WARREN OLNEY, III,
Assistant Attorney General.

OSCAR H. DAVIS,
Special Assistant to the Attorney General.

BEATRICE ROSENBERG,
HOWARD ADLER, JR.,
Attorneys.

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